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THE GAP, INC., a/k/a, GAP, INC., GAP INTERNATIONAL
7 SALES, INC., BANANA REPUBLIC, LLC, AND OLD NAVY,
LLC

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 ROOTS READY MADE GARMENTS CO.
13 W.L.L.,

14 Plaintiff,

15 v.

16 THE GAP, INC., a/k/a, GAP, INC., GAP
INTERNATIONAL SALES, INC., BANANA
17 REPUBLIC, LLC, AND OLD NAVY, LLC

18 Defendants.

Case No. C 07-03363 CRB

**DECLARATION OF ROSE DARLING IN
SUPPORT OF THE GAP, INC., a/k/a,
GAP, INC., GAP INTERNATIONAL
SALES, INC., BANANA REPUBLIC, LLC,
AND OLD NAVY, LLC'S OPPOSITION
TO ROOTS READY MADE GARMENTS'
MOTION TO CONSOLIDATE
PURSUANT TO FED. R. CIV. P. 42(a)**

Date: August 24, 2007

Time: 10:00 a.m.

Place: Courtroom 8, 19th floor

Judge: Hon. Charles R. Breyer

1 I, ROSE DARLING, declare and say that:

2 1. I am an attorney licensed to practice law in the State of California and before this
3 Court and am an associate at Keker & Van Nest, LLP, counsel for defendants The Gap, Inc.,
4 a/k/a, Gap, Inc., Gap International Sales, Inc., Banana Republic, LLC, and Old Navy, LLC
5 (collectively "Gap").

6 2. I have knowledge of the facts set forth herein, and if called to testify as a witness
7 thereto, could do so competently under oath.

8 **The Gabana v. Gap litigation**

9 3. Gap and Gabana commenced written discovery on July 28, 2006. In October
10 2006, Gap and Gabana completed the first round of document discovery, exchanging more than
11 25,000 pages of material.

12 4. In November 2006, Gap initiated what would become a nine-month attempt to
13 meet and confer with Gabana on a deposition schedule for numerous overseas witnesses. The
14 schedule for those depositions was finally confirmed last month.

15 5. Between January and July 2007, Gap and Gabana engaged in extensive discovery,
16 including:

- 17 • several rounds of document requests yielding more than 100,000 pages of
18 material;
- 19 • multiple rounds of interrogatories;
- 20 • extensive back-and-forth communications regarding scheduling depositions
21 abroad, which eventually resulted in a schedule for the depositions of several
22 witnesses in Paris and Geneva;
- 23 • a two-day deposition of Gabana's 30(6)(6) witness;
- 24 • a full-day deposition of Gap employee Ron Young;
- 25 • a full-day deposition of former Gap employee Jon Ehlen; and
- 26 • briefing and hearing on three motions to compel.

27 6. The discovery cut-off in the *Gabana* case is set for August 15, 2007. The
28 depositions of several international third parties will be completed the week of September 10,
2007. Expert reports are due on September 19, 2007. Summary judgment motions must be filed

1 by September 28, 2007. Trial is set for December 3, 2007.

2 **The *Roots v. Gap* litigation**

3 7. Roots served its complaint against Gap on July 10, 2007—more than a year after
4 the *Gabana v. Gap* litigation began. Roots filed this motion to consolidate on July 25, 2007,
5 more than two weeks before Gap's response to Roots' complaint was due. Roots amended its
6 complaint on July 27, 2007. Gap's response to Roots' FAC is due on August 13, 2007.

7 8. On July 30, 2007, the Court ordered Roots to produce documents relating to the
8 upcoming deposition of Gap former employee Jim Bell and held that Roots would be permitted
9 to attend that deposition, subject to Gap's approval. *See* July 30, 2007 Civil Minutes. The Court
10 declined to rule on whether Roots would be permitted to attend the upcoming depositions of the
11 foreign witnesses in the *Gabana* case. *See id.*

12 9. On August 3, 2007, Roots produced roughly 800 documents to Gap. Gap has
13 reviewed this production and determined that most of it consists of emails forwarding purchase
14 orders, revising purchase orders, or sorting through shipments. In addition, the production is
15 incomplete, as it is missing many email attachments and e-mails that are referenced in other
16 documents. More notably, however, Roots' production contained no documents relating to
17 negotiations between Roots, on the one hand, and Gabana or any retailer or distributor, on the
18 other hand, that preceded final agreements with those parties.

19 10. On July 31, 2007, Gap attempted to meet and confer with Roots in order to
20 determine Roots' plan for completing discovery in time to participate in the trial commencing on
21 December 3, 2007. In particular, my colleague Dan Jackson sent a letter to Roots' counsel,
22 asking them how Roots proposed to get everything done that must be done for trial, including
23 briefing and hearing on Gap's motion to dismiss, initial disclosures, written discovery,
24 depositions of multiple foreign witnesses, expert discovery, any motions to compel, and
25 summary judgment briefing and hearing. Roots failed to respond. Attached hereto as **Exhibit A**
26 is a true and correct copy of Mr. Jackson's letter to Roots' counsel, dated July 31, 2007.

27 11. On August 8, 2007, Roots proposed the following incomplete schedule for pretrial
28 preparation:

- 1 • Initial disclosures due by August 17, 2007.
- 2 • Interrogatories served by September 15, 2007, with responses due by October 15, 2007.
- 3 • All depositions to be completed by the week of October 15, 2007. Roots agreed
- 4 to join in the stipulation and order regarding depositions in the *Gabana* case and
- 5 offered to make a few foreign third parties available voluntarily, but it admitted
- 6 that some of these witnesses were “not within Roots control.”
- Expert discovery completed by October 30, 2007.

7 Roots did not propose a schedule for document discovery, motions to compel, or summary
8 judgment briefing and hearing. Attached hereto as **Exhibit B** is a true and correct copy of Roots’
9 August 8 letter to Gap setting forth their proposed pretrial schedule.

10 12. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the May
11 14, 2007 deposition of Gabana’s 30(b)(6) witness, François Larsen.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is
14 true and correct and that this declaration was executed in San Francisco, California on August
15 10, 2007.

16 /s/ Rose Darling
17 ROSE DARLING
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